IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: _____

Criminal Appeal No. 699-DB of 2004

Avtar Singh and another ... Appellants

Versus

State of Punjab ... Respondent

...

Criminal Appeal No. 700-DB of 2004

Pargat Singh ... Appellant

Versus

State of Punjab ... Respondent

...

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL

HON'BLE MR. JUSTICE HARBANS LAL

...

Present: Mrs. G.K.Mann, Advocate
and Mr.Darling Bahl,Advocate
for the appellants.

Mr. A. S. Jattana, Addl.AG Punjab
for the respondent-State.

...

HARBANS LAL, J

This judgment shall dispose of Criminal Appeal No. 699-DB of 2004 preferred by Avtar Singh and Dilbagh Singh as well as Criminal Appeal No.700-DB of 2004 filed by Pargat Singh directed against the judgment/order of sentence dated 19th July, 2004 rendered by the Court of

Additional Sessions Judge (Adhoc), Amritsar, whereby he convicted and sentenced Avtar Singh, Pargat Singh and Dilbagh Singh-accused/appellants to undergo rigorous imprisonment for 10 years and to pay fine of Rs.2,000/- each under Section 376(g) of IPC and further sentenced each of them to undergo life imprisonment and to pay fine of Rs.5,000/- each or in default thereof the defaulter to further undergo rigorous imprisonment for 6 months under Section 302/34 of IPC with a further direction that the sentences shall run concurrently.

The facts giving rise to this occurrence are that on 3rd February, 2001, Manjinder Kaur, her brother Yadvinder Singh and their other brother and sister and their mother Jagdish Kaur were present at their house. At about 6.00 P.M., accused Avtar Singh and Pargat Singh came there. At that time, Tarlok Singh, husband of Jagdish Kaur was present at the house of Jarnail Singh of his village in connection with the marriage of his (Jarnail Singh) daughter. Accused Avtar Singh inquired from Manjinder Kaur and others about Tarlok Singh. Jagdish Kaur asked from them as to what they were to say to him. Pargat Singh told her that they had some work with Tarlok Singh and they went back. At about 7.00 P.M., Tarlok Singh came to his house. He was informed about the visit of Avtar Singh as well as Pargat Singh to the house. Tarlok Singh told his wife and other members that both the accused were with him at the house of Jarnail Singh in connection with the marriage. Thereafter, Tarlok Singh went to sleep. Manjinder Kaur, her other sister, her brother and Jagdish Kaur were sitting at the house while watching Television when at about 10.30 P.M.,Avtar Singh, Pargat Singh and Dilbagh Singh accused came there. Jagdish Kaur protested saying that they had no business to come there at that time and she

was not to listen to them. Then all the three accused pounced upon her, pushed her and placed hand on her mouth and dragged her to take her out. At the same time, accused threatened to kill Manjinder Kaur and others in case of their making noise. Out of fear, they did not raise noise and remained sitting inside the house. They tried in vain to wake up Tarlok Singh. On the next morning, when Tarlok Singh woke up and gained consciousness, Manjinder Kaur and Yadvinder Singh narrated the occurrence to him. They all tried to make search to find out Jagdish Kaur. They found her dead body lying in the nearby fields. The head of the deceased was found completely smashed, which was lying there. They suspected that after committing rape, she was murdered. They called Gurmej Singh, Ex-Sarpanch of the Village, who is also the brother of Tarlok Singh. Leaving Tarlok Singh at the place of occurrence, Manjinder Kaur, accompanied by Gurmej Singh, was going to the Police Station, when on the way at the Bus Adda of Gobindgarh Manochahal Khurd, SI Baldev Singh, PW-10 met them. He recorded the statement of Manjinder Kaur and made his endorsement thereunder and sent the same to the Police Station, where FIR was recorded. He accompanied by Manjit Kaur and other officials went to the place of occurrence. He prepared the inquest report on the dead body of Jagdish Kaur and despatched the dead body for post-mortem examination along with a request. He lifted the blood stained earth from the scene of crime and turned the same into a sealed parcel. He took the same into possession. He prepared the rough site-plan showing the place of occurrence. He seized 4 bricks, broken pieces of bangles and one Salwar. On return to the Police Station, he deposited the case property with MHC with seals intact. He also seized clothes of the deceased which were

produced before him after post-mortem examination. After completion of investigation, the charge-sheet was laid in the Court of Ilaqa Magistrate.

On commitment, the accused were charged under Section 376 (g) and Section 302 read with Section 34 of IPC, to which they did not plead guilty and claimed trial.

In order to substantiate its allegations, prosecution has examined Dr. Tejwant singh, PW-1, HC Baljinder Singh, PW-2, HC Gurdial Singh, PW-3, Constable Baljit Singh, PW-4, HC Janak Raj, PW-5, Manjinder Kaur, PW-6, Constable Sukhwinder Raj, PW-7, Dr. Harpoonam Manku, PW-8, Inspector Joginder Singh, PW-9, Inspector Hardev Singh, PW-10, Rishi Ram Draftsman, PW-11 and Yadwinder Singh, PW-12.

On close of the prosecution evidence, when examined under Section 313 of Criminal Procedure Code, all the three accused denied the incriminating circumstances appearing in the prosecution evidence against them. They have come up with the plea that they have been involved in this case on the basis of suspicion. They did not adduce any evidence in defence.

After hearing the learned Additional Public Prosecutor for the State as well as learned defence counsel and examining the prosecution evidence, the learned trial Court convicted and sentenced the accused, as noticed at the outset. Feeling aggrieved with the impugned judgment/order of sentence, the accused have preferred this appeal.

We have heard Mrs. G.K.Mann, learned counsel for the appellants and Mr. A.S.Jattana, learned Additional Advocate General, Punjab, besides going through the record with due care and circumspection.

Mrs. G. K. Mann, Advocate appearing on behalf of the appellants, eloquently urged that the story put forth by the prosecution is

highly improbable for the reason that in case the occurrence had taken place in the alleged manner, then Manjinder Kaur, PW and other members of the family could have immediately called their uncle Gurmej Singh, Ex-Sarpanch, who is their neighbour.

To overcome this submission, Mr. A.S.Jattana, appearing on behalf of the State contended that as is borne out from the evidence, Tarlok Singh was residing in the farm-house whereas Gurmej Singh was living in the village, so, by no stretch of imagination, the latter can be described to be a neighbour of Tarlok Singh and it being night time, Manjinder Kaur and others could not move out.

Manjinder Kaur, PW in her statement, Ex. PH, which became the basis of FIR has stated in candid terms that they lived outside the village with family by building a house in the fields. There is no evidence to negate this fact. This fact has also not been denied by the accused. In her cross-examination, Manjinder Kaur, PW-6 has testified that the house of Gurmej Singh is at a distance of half kilometer from their house. A glance through the rough site-plan, Exhibit PL as well as Scaled site-plan, Exhibit PQ would reveal that the farm-house of Tarlok Singh, husband of the deceased is surrounded by his own land. So, there can be no manner of doubt that he is keeping his residence in the fields, which are not surrounded by Abadi. thus, Gurmej Singh being not a neighbour could not be called. More so, it was night time.

As emerges out of the depositions of Manjinder Kaur as well as her brother Yadwinder Singh, Pws, their father Tarlok Singh being dead drunk, did not wake up. Manjinder Kaur, her brother and sister being teenagers might have been gripped with fear psychosis, as the accused had

left behind a threat that they will be done to death if they raised noise. There being none in their close proximity, their shrieks, hue and cry were bound to drown in the ocean of serenity and silence. Their alarm was to go unresponded. For the reasons indicated above, they might have not couraged to stir out of their house to approach Gurmej Singh.

It has been further sought to be argued by Mrs.G.K.Mann that as per Manjinder Kaur, PW's and Yadwinder Singh, PW's evidence, the foot prints were lifted from the place of occurrence but the record is quite barren to show as to what action was taken and, thus, obviously, the important piece of evidence which was to favour the appellants, has been withheld by the prosecution.

To tide over this submission, Mr. A.S.Jattana has maintained that as transpires from the cross-examination of Inspector Hardev Singh, PW-10, he did not observe foot prints at the place where the deceased was dragged and, therefore, he did not prepare moulds.

Of course, Manjinder Kaur as well as Yadwinder Singh, Pws have stated in their cross-examination that moulds of foot prints were prepared and lifted by the Police but Hardev Singh, Inspector (sic.) has categorically stated that he did not observe the foot prints at the place where the deceased was dragged and that the foot prints were not detected by him at the place of occurrence. Manjinder Kaur and Yadwinder Singh, P.Ws, teenagers being lay persons, could not be expected to know the technical meaning of lifting of moulds. It was the concern of the Investigator, who has denied this fact. It seems that these witnesses, namely, Manjinder Kaur and her brother Yadwinder Singh were misled. To crown it all, the accused

have been named in the FIR. They were not strangers to the eye witnesses. They were their co-villagers. To add further to it, the accused-appellants had visited the house twice; in the first instance at about 6.00/7.00 PM. and then at 10.30 P.M.

Mrs. G.K.Mann, has further attacked the prosecution edifice by contending with great vigour that as has surfaced in the cross-examination of Manjinder Kaur, complainant, PW-6, one Channa, Sukha and Satta of her village were also arrested by the Police in connection with this case and they were released thereafter. If the abductors were known and named in the FIR, why the above mentioned persons were arrested. Their arrest in itself gives an inkling that the investigating agency was groping in dark in relation to the identity of the culprits.

Mr. A.S.Jattana pressed into service that the accused are named in the FIR and that being so, their identification is no longer in doubt.

Of course, Manjinder Kaur, PW has stated so but this fact has been denied by her brother Yadwinder Singh, PW. Besides this, Hardev Singh Inspector, PW has stated in categoric terms in his cross examination that no other person was joined in the investigation on the basis of suspicion. As noted supra, the accused were not strangers to the complainant party. As is borne out from the statement of Manjinder Kaur as well as Yadwinder Sikngh, PWs ,they were known to the accused. More so, it emanates from their evidence that there was electric light in the house, when the accused visited their house and they (accused) had entered into dialogues with the deceased in their presence. The deceased had also offered resistance and her being taken away forcibly by the accused was

also objected to by these witnesses. In re: **Daya Singh** v. **State of Haryana,** 2001 Criminal Law Journal 1268, the Apex Court has observed that " the purpose of test identification is to have corroboration to the evidence of the eye witnesses in the form of earlier identification and that substantive evidence of a witness is the evidence in the Court. If that evidence is found to be reliable, then absence of corroboration by test identification would not be in any way material. Further, where reasons for gaining an enduring impress of the identity on the mind and memory of the witnesses are brought on record, it is no use to magnify the theoretical possibilities and arrive at conclusion- what is present day social environment infested by terrorism is really unimportant. In such cases, not holding of identification parade is not fatal to the prosecution. "

Adverting to the facts of the instant case, the accused were identified by Manjinder Kaur as well as Yadwinder Singh, P.Ws and other inmates of the house when they visited the house twice. Furthermore, the accused were identified by these witnesses in the Court. Had it been a case of doubtful identity of the accused, only in that eventuality, the necessity would have arisen for the Investigator to join some other persons in the investigation for the purpose of interrogation. It is probable that by putting an answer into her mouth, she being misled, stated so.

Mrs. G.K.Mann, Advocate further canvassed at the bar that the samples of blood and semen were taken by the doctor, but the same were withheld from the Chemical Examiner, for the reasons best known to the prosecution.

True that Dr. Tejwant Singh, PW-1 has admitted in his cross-

examination that blood samples and semen were not sent to the Chemical Examiner as the Investigating Officer did not agree for the same but he is sharply contradicted by Hardev Singh Inspector, PW-10, who has stated that I did not instruct the doctor not to send the swabs and semen to the Chemical Examiner. As per the chemical Examiner's Report, Exhibit PK, semen was found in the vaginal swab as well as vaginal secretions taken from posterior fornix. This apart, Dr. Harpoonam Manku, PW-8 has also deposed that I have seen the report of Chemical Examiner, Exhibit PK and after going through that I gave my opinion that sexual intercourse had been made with Jagdish Kaur deceased before her death.

Mrs. G.K.Mann further assailed the prosecution story by maintaining that in case the intention of the appellants was to commit rape with the deceased, then it is not possible that they can cause death and further, as alleged by the prosecution that the deceased was abducted despite protests made by her son and daughter, the appellants could understand that they were likely to make statements against them and, therefore, there was no possibility to cause death by them.

This contention is unsustainable. The statement of Dr. Tejwant Singh, PW-1 reads in the following terms :-

> " On police application dated 4.2.2001, Ex.PA, I was deputed to conduct post-mortem examination on the dead body of Jagdish Kaur wife of Tarlok Singh, aged 35/36 years, r/o Village Manochahal Khurd. The dead body along with police papers including inquest report, Ex. PB was brought to mortuary on 4.2.2001 at 4.30 P.M. by HC

Janak Raj and HC Gurdial Singh. The dead body was identified by Tarlok Singh and Sarabjit Singh. As per police papers, death of Jagdish Kaur had taken place on 4.2.2001 at 6.20 A.M. The post-mortem examination was conducted by me on the same day at 4.50 P.M. On examination of the dead body, I found as under :-

It was a dead body of a female measuring 5'-2-3", moderately nourished and well built, wearing a shirt, under-shirt, sweater and a shawl Rigor mortis was present in all the four limbs. The cadeveric staining was present on the non-bony parts on the back and was fixed. The lower portion of the dead body was naked. There were multiple wounds present on the left side of skull. The brain matter was lying outside the skull cavity. The face, the hair and the clothes were blood-stained. Following injuries were noted on the dead body:-

(1) A lacerated wound measuring measuring 6 inch x 1.5 inch was present on the front part of head running horizontally 1.5 inch above the hair line, starting from 3 inch above the lateral end of right eyebrow, extending upto four inch above the lateral margin of left eyebrow. The clotted blood was present in the seat of the wound and around it. The underlying both frontal bones were seen fractured. The beninges were lacerated. the clotted blood could be seen in the cranial cavity.

(2) A lacerated wound present on the left side of skull, placed obliquely running up and backwards from 1.5 inch away from the lateral angle of left eye, measuring 3.5 inch x 2 inch in size. the underlying left frontal, temporal and parietal bones were seen fractured and lying attached with scalp tissue. The

brain tissue was lying outside the cranial cavity along with its membranes. The cranial cavity was full of clotted blood.

(3) A lacerated wound was present on the left side of skull 2 inches above the left pinna placed obliquely measuring 4 inch x 2 inch in size, running upwards and backwards. the underlying left occipital bone was seen fractured. The right parietal bones and right occipital bones were also seen fractured.

(4) A lacerated wound measuring 2 inch x 1 inch in size, placed horizontally across the left pinna at the level of external aubitory meatus. The pinna was crushed and the bones of auditory canal were seen fractured.

(5) A lacerated wound measuring 1.5 inch x .5 inch placed obliquely on the lobule of the ear. The lobule and a part of the pinna was separated from the rest of the ear.

(6) A contusion measuring 1 inch x .5 inch in size reddish blue in colour present below the right eyebrow over the right upper eyelid. The lid was swollen. Sub-conjuctival haemorrhage was present in the right eye.

(7) Multiple contusion marks were present on the left side of neck running up and backwards simulating finger marks measuring 1.5 inch x 2.5 inch in size present 2 inch below the chin running away from the mid-line.

(8) A lacerated wound measuring .25 x .25 inch in size present on the right side of the neck 1 inch away from the mid-line. Clotted blood was present in its seat.

(9) A reddish blue contusion mark present on the right side of neck running away from mid-line upwards and backwards, measuring 1.5 inch x 1 inch in size.

(10) Multiple contusion marks were present on the inner sides of both the thighs in upper part.

All other organs in the chest were healthy. Right and left lung was seen congested. The chambers of the heart were empty. All the abdominal organs were seen

healthy. Vaginal swab was taken by Dr. Harpoonam Manku, M.D. Gynae, Medical Officer, Civil Hospital, Tarn Taran on a written request regarding the occurrence of rape.

Cause of death, in this case, was in my opinion due to multiple injuries on the head No. 1, 2, 3 and 4 sustained and described and were ante-mortem and leading to haemorrhage and shock and were sufficient to cause death in the ordinary course of events.

Re-constituted dead body and belongs along with copy of PMR and original police papers signed and numbered by me from 1 to 9 leaves were handed over to the police.

The probable time that elapsed between injuries and death was given to be from 0 to 3 minutes and the time between death and post-mortem was within 24 hours.

Ex. PC is the carbon copy of PMR and Ex.PC/1 is the carbon copy of pictorial diagram showing the seats of injuries on the dead body. The originals of these, I have brought today with me which are in my hand and bear my signatures. ”

It follows from the evidence on record that Salwar was removed and was lying there. The broken bangles of the deceased were also recovered from the scene of crime. Obviously, as many as 10 injuries were

found on the dead body. It is in the prosecution evidence that the accused had met Tarlok Singh, husband of the deceased, in the house of Jarnail Singh. There being marriage in the house of Jarnail Singh, in all probability, the accused might have also consumed liquor, under the influence of which, they might be sexually obsessed and to satiate their sexual lust, they had gone to the house of Tarlok Singh to abduct the deceased. As per prosecution evidence trickled from the mouth of Manjinder Kaur as well as Yadwinder Singh, P.Ws, the deceased had protested by saying that they had no business to come there at that time and she was not prepared to listen to them. she flew into rage on their repeated visits to her house. On evaluating the prosecution evidence, it transpires that she had put up resistance to the best of her ability but she succumbed and fell victim to the force employed by the accused-appellants. The deceased was last seen in the company of the accused when they abducted her. She was found to have been ravished. The injuries on her neck coupled with the recovery of broken bangles of her from the spot, go a long way in proving that she had offered stiff resistance. There could be every possibility that one of the accused had forcibly held her neck to overcome resistance and to allow the other one to commit rape with her. The presence of contusions on the inner side of her both thighs too tend to show that she was dealt with violently to enable the accused to commit rape on her.

At this juncture, Mrs. G.K.Mann submitted that it is probable that the deceased was a characterless lady and some unknown persons took her outside and after ravishing, committed her murder.

This contention holds no water. This Court in **Sat Pal** v. **State of Punjab,** 1997 (1) Recent Criminal Reports 92, by relying upon the

observations made by the Hon'ble Supreme Court in **State of Panjab** v. **Gurmit Singh,** 1996 (1) Recent Criminal Reports 533 held that " if the prosecutrix is of loose moral character, this gives no license to the accused to have forcible sexual intercourse with her against her consent." For a little while, if it is assumed that the deceased was of a loose moral character, in view of the above extracted observations, her such conduct did not give a license to the accused to have forcible sexual intercourse with her against her consent. In **Gurmit Singh's** case (supra), it has been observed that "even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to any one and every one because she is not a vulnerable object or prey for being sexually assaulted by any one or every one. "

Coming to the facts of the case at hand, the repeated visits of the accused to the house of the deceased gives rise to the inference that they were on the prowl to make her a prey for being sexually assaulted. It is in the evidence of Hardev Singh Inspector, PW-10 that 4 bricks found lying at the place of occurrence were also taken into possession vide Memo. PM. As per the medical evidence given by Dr.Tejwant Singh, PW-1, cause of death in this case in his opinion was due to multiple injuries on the head i.e. injuries no. (1), (2), (3) and (4) sustained and ascribed and were ante-mortem and leading to haemorrhage and shock and were sufficient to cause death in the ordinary course of events and that the probable time that elapsed between the injuries and death was given to be 0-3 minutes. Injury No.1 is on the front part of head. Injuries No. 2 and 3 are on the skull. As per injury no. 4, the pinna was crushed and the bones of auditory canal were seen fractured. These injuries speak volume of crushing the skull. As

per the ocular account,when the dead body was recovered, the head was found brutally smashed. In re: **State of Punjab** v. **Gurmit Singh** (supra) in paragraph 21 of the judgment, it has been laid down "that rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim." In re: **Shivu and another** v. **R.G.High Court of Karnataka and another**, 2007 (2) Recent Criminal Reports (Criminal) 53, the deceased went to the family land situated near her house to dump manure. On he morning she did not return, PW-1 went in search of her after some time. When the deceased was not seen in the land, PW-1 began to call her by name. Suspecting some untoward incident, when PW-1 went near the spot, she saw the body of the deceased lying on the ground with clothes disarrayed. Noticing that she was dead, PW-1 raised hue and cry. In this case, the conviction and sentence was maintained. In the instant case, the accused being drunken, might have felt irritated by the persistent refusal to submit herself for sexual intercourse.

Mrs. G. K.Mann further maintained that this case has been fastened on the appellants because of enmity of their family with Gurmej Singh, the brother of the husband of the deceased with Kashmir Singh, uncle of Avtar Singh and Dilbagh Singh on account of their contesting the elections of Sarpanch in the village and due to this, there was enmity between the families and the appellants have been falsely implicated in this case.

We are unable to subscribe ourselves to this submission. If there was animosity between Gurmej Singh, brother of Tarlok Singh, the husband of the deceased, on the one hand and Kashmir Singh, uncle of

Avtar Singh and Dilbagh Singh appellants, on the other hand, in that eventuality, by no stretch of speculation Gurmej Singh would have gone to the extent to get his brother's wife raped and killed simply to implicate the nephews of Kashmir Singh. In their statutory statements,the accused have have not come up with such a plea nor they have adduced any evidence in proof of this fact.

In case **State of West Bengal** v. **Mir Mohammad Omar and others etc. etc.,** 2000 (2) Shimla Law Journal S.C. 1679, a businessman of Calcutta was abducted and killed. The kingpin of the abductors and some of his henchmen were later nabbed and were tried for the offences. The trial Court convicted them. In paragraph no. 30 of this judgment, it has been observed that the abductors have not given any explanation as to what had happened to Mahesh after he was abducted by them. In paragraph no. 34, it has been observed that when it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if accused would tell the Court what else happened to Mahesh at least until he was in their custody.

Coming to the facts of the instant case, it is abundantly established on the record that the accused had abducted the deceased. Here in this case, Jagdish Kaur deceased was found murdered within a short time after her abduction, therefore, the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered her.

Section 106 of the Indian Evidence Act envisages that " when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. " This Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, fails to offer any explanation which might drive the Court to draw a different inference.

Adverting to the facts of the case in hand, the prosecution has succeeded in proving that the deceased was abducted by the accused. In their respective statutory statements, the accused-appellants have merely pleaded their innocence and their having been involved on the basis of suspicion. The accused have not disclosed to the Court as to what else had happened to her when she was in their custody. If she was taken out of their custody by anyone else before her being ravished or murdered, that fact could only be in their exclusive knowledge. So, in view of the doctrine of presumption as enshrined in the language of Section 106 **ibid,** it was for the appellants to prove as to what else had happened to the deceased after her abduction by them, inasmuch as they have not rebutted this presumption. So, there is every reason to believe that the deceased was murdered after rape by the appellants.

No other material point has been urged or agitated before us by Mrs. G.K.Mann on behalf of the appellants.

The prosecution has proved the following circumstances :-

(1) The accused visited the deceased's house twice before her rape and murder.

(2) The accused and the deceased were last seen together when the latter was abducted.

(3) Recovery of dead body from the nearby field.

(4) Recovery of Salwar and broken pieces of bangles of the deceased.

(5) Recovery of four bricks from the scene of crime, when looked in the background of medical evidence, it transpires that the deceased was done to death with the help of bricks.

(6) Medical evidence

The aforementioned circumstances go a long way in establishing that the chain of evidence is so complete that within all human probability the appellants first committed rape on the deceased and then put an end to her life. Sequelly, we do not find any infirmity or illegality in the impugned judgment/order of sentence. So, both these appeals are dismissed being meritless.

(HARBANS LAL)
JUDGE

(MEHTAB S. GILL)
JUDGE

December ____, 2007
RS

Whether to be referred to the Reporter ? Yes/No